

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Northern Iowa on the following ☐ Patents or ☒ Trademarks:

DOCKET NO. C10-4090MWB	DATE FILED 9/24/2010	U.S. DISTRICT COURT Northern Iowa
PLAINTIFF Wells Dairy Inc.		DEFENDANT Dipping Dots Inc.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1, 945, 098		
2, 114, 408		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT Stipulation of Dismissal with Prejudice filed 3/4/11-see attached.

CLERK Robert L Phelps	(BY) DEPUTY CLERK /s/ djs	DATE 3/7/11
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

WELLS' DAIRY, INC.,

Plaintiff,

v.

DIPPIN' DOTS, INC.

Defendants

Civil Action No. 5:10-cv-04090-MWB

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, Wells' Dairy, Inc. ("Plaintiff") for its complaint against Defendant, Dippin' Dots, Inc. ("Defendant"), alleges as follows:

1. Plaintiff is a corporation organized and existing under the laws of the State of Iowa, with its principal place of business at 1 Blue Bunny Drive, Le Mars, Iowa 51031.
2. Defendant is a corporation organized and existing under the laws of Illinois with its principal offices at 5101 Charter Oak Drive, Paducah, Kentucky 42001.
3. This is a civil action for trademark infringement arising under the Trademark Laws of the United States, 15 U.S.C. §§ 1051-1127; for false designation of origin and unfair competition in violation of 15 U.S.C. § 1125(a); and for trademark infringement and unfair competition under the common law of the State of Iowa.

4. The subject matter jurisdiction of this court is invoked under 15 U.S.C. § 1121(a), 28 U.S.C. §§ 1331, 1332(a) and 1338(a). This Court has related claim jurisdiction over the state law claim pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

5. Based on information and belief, this Court has personal jurisdiction over the Defendant because Defendant is licensed to do business with the state of Iowa, has done and regularly does business in this judicial district and throughout the state of Iowa and the acts complained of herein have taken place, and will take place in this judicial district. Further, Defendant has intentionally directed their actions to this district by undertaking the conduct alleged below knowing or should have known that the brunt of injury would be suffered in this District.

6. Venue is proper under 28 U.S.C. § 1391.

7. The amount in controversy in this action is in excess of \$75,000.

COUNT I

Trademark Infringement under 15 U.S.C. § 1114 (Registration Nos. 2,114,408 for CHILL and 1,945,098 for LEMON CHLL)

8. Plaintiff is the owner of U.S. Trademark Registration Nos. 2,114,408 for the mark CHILL, issued November 18, 1997, and 1,945,098 for the mark LEMON CHLL, issued January 2, 1996, for naturally flavored Italian ice in International Class 30. These registrations are in full force and effect. True and correct copies of these Registration Certificates are attached as Exhibit A.

9. U.S. Registration Nos. 1,945,098 and 2,114,408 are both incontestable.

10. Plaintiff sells frozen confections under the CHILL and LEMON CHILL marks throughout the United States, and has sold products under the LEMON CHILL mark

(Registration No. 1,945,098) dating back as early as January 1989. By virtue of its extensive sales, the CHILL and LEMON CHILL mark have become distinctive and widely recognized by members of the public who, upon seeing the name, identify the name with Plaintiff. True and correct copies of Plaintiff's 2010 Product Guides evidencing Plaintiff's use of this mark in commerce are attached as Exhibit B.

11. Defendant is a manufacturer and distributor of frozen confection novelty products and has sought registration in the United States Patent and Trademark Office for the mark DIPPIN' DOTS CHILLZ, Application Serial No. 77/799,034 for use in connection with "ice cream, frozen yogurt, and novelty flavored frozen water beads". A true and correct copy of this application is attached as Exhibit C.

12. On information and belief, Defendant has launched a line of products known as "Dippin' Dots CHILLZ," also known as "CHILLZ," for frozen confections. True and correct copies of Defendant's website showing this product are attached as Exhibit D.

13. Defendant's conduct in launching a product line of frozen confections bearing the trade name "CHILLZ" or "Dippin' Dots CHILLZ" constitutes willful and intentional trademark infringement of Plaintiff's federally registered and uncontested trademarks CHILL and LEMON CHILL in violation of 15 U.S.C. § 1114. Said use by Defendant, which is without permission of Plaintiff, has caused confusion and is likely to continue to cause confusion, to cause mistake, or to deceive as to the source, sponsorship, or approval of Defendant's goods in that consumers of Plaintiff's goods are likely to believe that Defendant's goods are either those offered by Plaintiff or are in some way legitimately connected with Plaintiff, all to Plaintiff's damage.

14. Defendant's conduct complained of herein has caused substantial and irreparable damage to Plaintiff and will continue to cause further irreparable damage to Plaintiff if Defendant is not permanently enjoined by this Court from further violation of Plaintiff's rights and Plaintiff has no adequate remedy at law.

COUNT II
False Designation of Origin and Unfair Competition under 15 U.S.C. § 1125(a)
(CHILL and LEMON CHILL)

15. Plaintiff repeats and re-alleges each of the above paragraphs as if set forth fully herein.

16. Defendant's use of "CHILLZ" or "Dippin' Dots CHILLZ" constitutes use in commerce of a device, or a false designation of origin, or a false or misleading description or representation with respect to Defendant's goods, which is likely to cause confusion, to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with Plaintiff, or as to the origin, sponsorship, or approval of Defendant's goods, and Plaintiff has been and is likely to be damaged by Defendant's use of such symbols or device, or false designation or origin, or false or misleading description or representation, all in violation of 15 U.S.C. § 1125(a).

17. Defendant's conduct complained of herein has caused substantial and irreparable damage to Plaintiff and will continue to cause further irreparable damage to Plaintiff if Defendant is not preliminarily and permanently enjoined by this Court from further violations of Plaintiff's rights and Plaintiff has no adequate remedy at law.

COUNT VI
Common Law Trademark Infringement and Unfair Competition
(CHILL and LEMON CHILL)

18. Plaintiff repeats and re-alleges each of the above paragraphs as if set forth fully herein.

19. Defendant's use of "CHILLZ" or "Dippin' Dots CHILLZ" constitutes use in commerce of a symbol or device, or a false designation of origin, or a false or misleading description or representation with respect to Defendant's goods, which is likely to cause confusion, to cause mistakes, or to deceive as to the affiliation, connection, or association of Defendant with Plaintiff, or as to the origin, sponsorship, or approval of Defendant's goods and services, and Plaintiff has been and is likely to be damaged by Defendant's use of such symbols or device, or false designation of origin, or false or misleading description or representation all in violation of the common law of the State of Iowa.

20. Defendant's conduct complained of herein has caused substantial and irreparable damage to Plaintiff and will continue to cause further irreparable damage to Plaintiff if Defendant is not preliminarily and permanently enjoined by this Court from further violation of Plaintiff's rights and Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Wells' Dairy demands judgment in its favor and against Defendant as follows:

A. That Defendant, its officers, directors, agents, attorneys, servants, employees, successors, and assigns, and all other persons in active concert or participation with them, and all those acting under the authority of or in privity with Defendant, be preliminarily and

permanently enjoined from using in any manner whatsoever “CHILLZ” alone or in combination with other words and/or symbols and/or colors as a trademark to advertise, promote, or identify the source of its goods;

B. that Defendant be ordered to remove all advertisements, promotions, displays, packaging, price lists, catalogs, publications, and articles, or any other materials in its possession or in control of any of its agents, which bear or represent in any way a copy, simulation, colorable imitation, reproduction, photograph, copy, or similar device that is confusingly similar to Plaintiff’s trademarks and rights alleged above;

C. that Defendant be ordered to account for and pay over to Plaintiff all earnings, profits, receipts and advantages derived by Defendant through the marketing of goods in association with the unlawful acts alleged herein;

D. that Defendant be ordered to compensate Plaintiff for the advertising or other expenses necessary to dispel, cure, or counteract any public confusion caused by Defendant’s unlawful acts;

E. that Defendant be ordered to pay Plaintiff compensatory damages in a sum equal to three (3) times the amount of Plaintiff’s actual damages pursuant to 15 U.S.C. § 1117;

G. that Defendant be order to expressly abandon its trademark Application Serial No. 77/799,034;

F. that Plaintiff be awarded its costs, expenses, and attorneys’ fees for bringing and prosecuting this action; and

G. that Plaintiff be awarded such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a jury trial on all issues triable by jury.

Respectfully submitted,

/s/ Christine Lebrón-Dykeman

Bruce W. McKee
Christine Lebrón-Dykeman
Kurt Van Thomme
McKEE, VOORHEES & SEASE, P.L.C.
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Des Moines, Iowa 50309-2721
Telephone: (515) 288-3667
Facsimile: (515) 288-1338
Email: mvslit@ipmvs.com

ATTORNEYS FOR PLAINTIFF

JS 44
(Rev. 3/99)

C10-4090 MWB

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Wells' Dairy, Inc.

DEFENDANTS

Dippin' Dots, Inc.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Plymouth County, Iowa
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(C) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Christine Lebrón-Dykeman, Bruce W. McKee, Kurt R. Van Thomme
McKee, Voorhees & Sease, PLC
801 Grand Ave., Suite 3200
Des Moines, IA 50309

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 162 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefit <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY - Med. Malpractice <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Rel. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW(405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS -Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify) _____
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES IN DIVERSITY.)

15 U.S.C. §§ 1114, 1125 (trademark infringement and false designation of origin)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) (See instructions): IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,945,098

Registered Jan. 2, 1996

**TRADEMARK
PRINCIPAL REGISTER**

LEMON CHILL

**MOORE ENTERPRISES, INC. (TEXAS CORPORATION)
3221 MAY STREET
FORT WORTH, TX 76110**

**FOR: NATURALLY FLAVORED ITALIAN
ICES, IN CLASS 30 (U.S. CL. 46).**

**FIRST USE 1-0-1989; IN COMMERCE
1-0-1989.**

**OWNER OF U.S. REG. NOS. 1,606,621 AND
1,798,016.**

**NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "LEMON" , APART FROM
THE MARK AS SHOWN.**

SER. NO. 74-536,622, FILED 6-13-1994.

**HOWARD FRIEDMAN, EXAMINING ATTOR-
NEY**

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,114,408

United States Patent and Trademark Office

Registered Nov. 18, 1997

**TRADEMARK
PRINCIPAL REGISTER**

CHILL

**MOORE ENTERPRISES, INC. (TEXAS CORPORATION)
3221 MAY STREET
FORT WORTH, TX 76110**

**OWNER OF U.S. REG. NOS. 1,606,621 AND
1,798,016.**

SEC. 2(F).

**FOR: NATURALLY FLAVORED ITALIAN
ICE, IN CLASS 30 (U.S. CL. 46).**

SN 74-536,709, FILED 6-13-1994.

**FIRST USE 6-5-1997; IN COMMERCE
6-5-1997.**

**HOWARD FRIEDMAN, EXAMINING ATTOR-
NEY**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

_____)	
WELLS' DAIRY, INC.,)	
)	Civil Action No. 5:10-cv-04090-MWB
Plaintiff,)	
)	Judge Mark W. Bennett
v.)	Magistrate Paul A. Zoss
)	
DIPPIN' DOTS, INC.,)	
)	
Defendant.)	
_____)	

STIPULATION AND ORDER REGARDING DISMISSAL WITH PREJUDICE

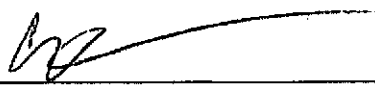
The parties to this action, having settled and resolved all disputes contained herein or pertaining hereto, stipulate and agree as follows, subject to the approval of the Court.

1. The Court has jurisdiction over the parties and the subject matter of this dispute.
2. All claims, demands and defenses asserted herein by way of the pleadings shall be, and the same hereby are, dismissed with prejudice.
3. Each party shall bear its own costs, expenses and attorney fees.
4. This Court shall retain jurisdiction for the purpose of enforcing this Order and the Settlement Agreement entered into by the parties in settlement of this litigation.

IT IS SO ORDERED.

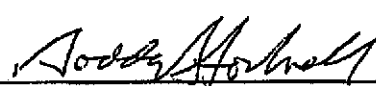
Dated: _____

The Honorable Mark W. Bennett
United States District Judge



Bruce W. McKee
Christine Lebrón-Dykeman
Kurt Van Thomme
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2010, I filed the foregoing with the Clerk of Court using the ECF system which will send notification of such filing to the following:

A handwritten signature in black ink, consisting of a stylized 'B' followed by a long horizontal stroke.